

REMARKS

Claims 1-9, 11-15, 17-19, 21, 23-32, 35-39, 41-43, 46 and 48 are pending, of which Claims 1, 11, 21, 24, 35 and 46 are independent. Claims 1, 11, 21, 24, 35 and 46 are amended. Reconsideration and further examination are respectfully requested.

Initially and with regard to a formal matter, the specification is being amended in accordance with the benefit claim and specific reference made in the declaration and application transmittal papers submitted to the U.S. Patent and Trademark Office within the time period set forth in 37 CFR § 1.78(a)(2)(ii). The benefit claim made in the papers submitted to the Office was recognized by the Office as evidenced by the inclusion of this information in the first filing receipt issued by the Office in connection with the present application. Accordingly, a petition under 37 CFR 1.78(a) is not believed to be required. See MPEP § 201.11(III)(E).

Turning to the art rejections, Claims 1-3, 5-8, 11-15, 17, 18, 21, 24-26, 28-31, 35-39, 41, 42 and 46 are rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 5,758,257 (Herz), and Claims 4, 9, 19, 23, 27, 32, 43 and 48 are rejected under 35 U.S.C. § 103(a) over Herz. Reconsideration and withdrawal of the rejections are respectfully requested.

By way of a non-limiting example and in accordance with one or more embodiments, a server, or servers, selects data streams, e.g., songs, video, etc., for a playlist of data streams, which are to be broadcast over a computer network to an individual user computer in the form of a personalized internet radio station for the individual user. The selection method used by the server(s) to select the data streams is influenced but is not controlled by the user's data stream preferences, to prevent an on-demand selection of data streams by the server(s) for the personalized internet radio station based on user data stream preferences.

Turning to the specific language of the claims, Claim 1 recites a method which accesses a database of data streams by at least one server; selects at least one data stream for broadcast over a computer network to an individual user as a personalized internet radio station, the at least one data stream being selected from the database according to a selection method performed by the at least one server to create a playlist of data streams, the selection method performed by the at least one server being influenced by input received from the individual user that comprises individual user preferences for data streams to be broadcast but not controlled by the individual

user's input so as to prevent an on-demand selection of data streams by the at least one server for broadcast to the individual user based on data stream preferences; transmits the selected at least one data stream to the individual user computer from the at least one server via the network; receives feedback via the network at the at least one server, the feedback expressing an individual user preference of the individual user regarding at least one of the transmitted data streams; and updates the selection method using the individual user preference. The updated selection method performed by the at least one server biases selection of data streams to be experienced at the individual user computer in accordance with the individual user preferences and limits the individual user's control over selection of particular data streams from the database to prevent the on-demand selection of data streams.

Claim 1 is amended to even more clearly recite that the claimed selection method prevents a server's on-demand selection of data streams for a playlist of data streams for broadcast to an individual user based on data stream preferences. In accordance with the method of Claim 1, a playlist is created using a server-performed selection method, which is influenced by input received from the individual user but is not controlled by the individual user's input, so as to prevent an on-demand selection of data streams by the at least one server for broadcast to the individual user as a personalized internet radio station based on data stream preferences.

Herz cannot form the basis of a proper § 102 rejection, and cannot form the basis of a proper § 103 rejection, since Herz fails to teach, suggest or disclose multiple claim elements.

Herz describes a cable network system that broadcasts programs on channels, to which the user can tune to view a program that is broadcast on the channel. Herz provides both general and virtual channels. According to Herz, a virtual channel is customized for an individual user, with the programs that are broadcast on a user's virtual channel being selected for the user by a scheduling algorithm based on the user's preferences. See Herz, col. 4, lines 18 to 31 and col. 24, lines 36 to 40, for example. Herz' system uses a scheduling algorithm that selects programs for the user's virtual channel based on the user's preferences. In contrast, in selecting data streams for a personalized internet radio station for the user, the claimed at least one server uses a selection method, which is influenced but is not controlled by an individual user's input, so as to prevent on-demand selection, of data streams for broadcast to the user based on data stream

preferences.¹ Herz describes a scheduling algorithm that selects programs for a user's virtual channel based on user preferences, and therefore does not describe a selection method to prevent selection of data streams for broadcast to said individual user based on data stream preferences, as recited in Claim 1. Herz fails to teach, suggest or disclose the claimed selection method, which is influenced by input received from the individual user that comprises individual user preferences for data streams to be broadcast but is not controlled by said individual user's input so as to prevent an on-demand selection of data streams for broadcast to said individual user based on data stream preferences.

In view of the foregoing, since Herz is missing multiples elements recited in Claim 1, Herz cannot provide the basis of a proper § 102(b) or a § 103(a) rejection. Claim 1 and the claims that depend from Claim 1 are therefore believed to be in condition for allowance. Claims 11, 21, 24, 35 and 46 and the claims that depend from Claims 11, 21, 24, 35 and 46 are also believed to be in condition for allowance for at least the same reasons.

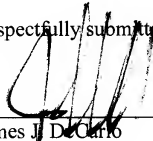
Should matters remain which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney. Alternatively, since it is believed that the claims of the present application are in condition for allowance, the Examiner is respectfully requested to issue a Notice of Allowance at the Examiner's earliest convenience.

The applicant's attorney may be reached by telephone at 212-801-6729. All correspondence should continue to be directed to the address given below, which is the address associated with Customer Number 76058.

¹ In his response, the Examiner refers to an on-demand channel, i.e., HBO's on-demand channel, which the Examiner describes as displaying a list of media so that the user can select an item from the list and then playing the selected item so that the user can view a list of media and then view a selected item immediately on the same on-demand channel used to view the media list. The Examiner maintains that Herz does not give its user control over selection, since the user does not have the ability to immediately play a selected program on the virtual channel. The Applicant respectfully submits that Claim 1 is not directed to preventing an on-demand channel, such as HBO's on-demand channel, or controlling a user's interaction with such an on-demand channel. The Applicant further respectfully submits that Claim 1 is directed to preventing on-demand selection, by a server-performed selection method, of data streams for a personalized internet radio station based on user data stream preferences, which is not disclosed by Herz.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-1561. Please ensure that the Attorney Docket Number is referenced when charging any payments or credits for this case.

Respectfully submitted,



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